

ESTTA Tracking number: **ESTTA241386**

Filing date: **10/08/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	The Weck Corporation
Granted to Date of previous extension	10/08/2008
Address	1220 Third Avenue New York, NY 10021 UNITED STATES
Attorney information	Virginia R. Richard Winston & Strawn LLP 200 Park Avenue New York, NY 10166 UNITED STATES vrichard@winston.com, trademarkny@winston.com Phone:212 294 6700

Applicant Information

Application No	77372586	Publication date	06/10/2008
Opposition Filing Date	10/08/2008	Opposition Period Ends	10/08/2008
Applicant	goodness gracious gourmet co. PO Box 16945 Philadelphia, PA 19142 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2008/01/03 First Use In Commerce: 2008/01/03 All goods and services in the class are opposed, namely: Grain-based food bars also containing chocolate, dry fruits, nuts, spices; Bakery desserts; Bakery goods; Bakery products; Bakery products, namely, sweet bakery goods; Cookies; Cookies and crackers; Cakes; Cup cakes; Cracker and cheese combinations; Crackers; Pies; Brownies; Biscuits and bread; Bread; Bread and pastry; Herb tea; Herbal tea; Donuts; Muffins; Beverages made of tea; Coffee and tea; Fruit teas; Tea; Tea-based beverages with fruit flavoring; Fruit cobblers; Fruit pies; Biscuits; Buns; Candy bars; Chocolate bars; Granola-based snack bars; Pastries; Pastry

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	947721	Application Date	04/01/1971
Registration Date	11/21/1972	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U101 (International Class 042). First use: First Use: 1963/11/00 First Use In Commerce: 1964/01/10 RETAIL GIFT, HARDWARE, HOUSEWARES AND HOME FURNISHING STORE SERVICES		

U.S. Registration No.	2284659	Application Date	12/23/1997
Registration Date	10/12/1999	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 002. First use: First Use: 1996/09/00 First Use In Commerce: 1996/09/00 INTERIOR AND/OR EXTERIOR PAINT</p> <p>Class 003. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 CLEANING PREPARATIONS, NAMELY TILE CLEANERS AND TILE POLISHES</p> <p>Class 004. First use: First Use: 1996/11/00 First Use In Commerce: 1996/11/00 CANDLES</p> <p>Class 008. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 HAND TOOLS, NAMELY, SCREWDRIVERS AND SCREWDRIVER BIT KITS</p> <p>Class 011. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 FLASHLIGHTS, LAMPS, LAMPSHADES AND FAUCETS</p> <p>Class 014. First use: First Use: 1996/07/00 First Use In Commerce: 1996/07/00 WALL CLOCKS</p> <p>Class 016. First use: First Use: 1995/05/00 First Use In Commerce: 1995/05/00 GIFT WRAPPING PAPER AND FRAMED PHOTOGRAPHIC, PICTORIAL AND LITHOGRAPHIC PRINTS</p> <p>Class 020. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 PICTURE FRAMES AND DECORATIVE PILLOWS</p> <p>Class 021. First use: First Use: 1996/05/00 First Use In Commerce: 1996/05/00 NON-METAL AND NON-PRECIOUS METAL HOUSEWARES, NAMELY, PLATES, CUPS, SAUCERS, BOWLS, CREAMERS, SUGAR BOWLS, TEAPOTS, COFFEE POTS, SERVING PLATTERS, SPOON RESTS, CANDLESTICKS; BUTTER DISHES, SALT SHAKERS, PEPPER SHAKERS, EGG CUPS, PITCHERS, SOUP TUREENS, CANISTERS, MUGS, FLOWER POTS, VANITY TRAYS, WASTEPAPER BASKETS, TISSUE BOX COVERS, CACHEPOTS, DRINKING GLASSES, NAMELY, TUMBLERS, SOAP DISHES, TOOTHBRUSH HOLDERS, SKIN AND HAND LOTION PUMPS FOR HOME USE, COTTON JARS, COTTON SWAB JARS CARAFES, PICNIC BASKETS AND SPONGES FOR HOUSEHOLD PURPOSES</p> <p>Class 024. First use: First Use: 1995/05/00 First Use In Commerce: 1995/05/00</p>		

	<p>DOMESTIC TEXTILES, NAMELY, DINNER NAPKINS, COCKTAIL NAPKINS, PLACEMATS, TABLECLOTHS, SHOWER CURTAINS, BATH TOWELS, HANDTOWELS, BATH SHEETS, WASHCLOTHS, FLAT BED SHEETS, FITTED BED SHEETS, PILLOWCASES, PILLOW SHAMS, DUVET COVERS, DUST RUFFLES, MATTES LASSES AND BED SPREADS AND COMFORTERS, DECORATIVE TEXTILE TRIM</p> <p>Class 025. First use: First Use: 1996/09/00 First Use In Commerce: 1996/09/00 APPAREL, NAMELY BASEBALL CAPS</p> <p>Class 026. First use: First Use: 1996/07/00 First Use In Commerce: 1996/07/00 DECORATIVE KEY TASSELS, DECORATIVE TIE BACKS AND RIBBONS</p>
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U.S. Registration No.	3011708	Application Date	11/15/2001
Registration Date	11/01/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2004/01/01 First Use In Commerce: 2004/01/01 Candles		

U.S. Registration No.	3024023	Application Date	11/15/2001
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 008. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 Hand tools, namely, screwdrivers		

U.S. Registration No.	3024024	Application Date	11/15/2001
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 cups, salt shakers, pepper shakers, mugs, and sponges for household purposes		

U.S. Registration No.	3024025	Application Date	11/15/2001
Registration Date	12/06/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 Retail gift, hardware, housewares, home furnishing and furniture store services

U.S. Registration No.	3029630	Application Date	11/15/2001
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 picture frames		

U.S. Registration No.	3036142	Application Date	11/15/2001
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2004/01/01 First Use In Commerce: 2004/01/01 Cleaning preparations, namely tile cleaners and tile polishes		

U.S. Registration No.	3036143	Application Date	11/15/2001
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 024. First use: First Use: 2004/01/01 First Use In Commerce: 2004/01/01 Domestic textiles, namely, shower curtains, flat bed sheets, fitted bed sheets, pillowcases, pillow shams, duvet covers		

U.S. Registration No.	3085757	Application Date	11/15/2001
Registration Date	04/25/2006	Foreign Priority Date	NONE
Word Mark	GRACIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00 flashlights and lampshades		

U.S. Registration No.	3264838	Application Date	08/29/2006
Registration Date	07/17/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2005/08/03 First Use In Commerce: 2005/08/03 online retail store services in the field of retail gift, hardware, housewares and home furnishings		

U.S. Registration No.	3351200	Application Date	03/08/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/12/04 First Use In Commerce: 2000/12/04 Paper and cardboard gift boxes		

U.S. Registration No.	3351201	Application Date	03/08/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2002/03/21 First Use In Commerce: 2002/03/21 tape measures		

U.S. Registration No.	3351202	Application Date	03/08/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 020. First use: First Use: 2005/09/05 First Use In Commerce: 2005/09/05 Framed decorative mirrors		

U.S. Registration No.	3351209	Application Date	03/08/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2006/11/21 First Use In Commerce: 2006/11/21 Chemically-treated paper for the prevention of tarnishing

U.S. Registration No.	3351799	Application Date	04/11/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1996/06/00 First Use In Commerce: 1996/06/00 Retail store services in the field of gifts, hardware, housewares and home furnishings		

U.S. Registration No.	3408659	Application Date	08/01/2007
Registration Date	04/08/2008	Foreign Priority Date	NONE
Word Mark	GRACIOUS HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2007/01/30 First Use In Commerce: 2007/01/30 Credit card services		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/W&S/
Name	Virginia R. Richard
Date	10/08/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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THE WECK CORPORATION	:	
d/b/a GRACIOUS HOME,	:	U.S. Trademark Application
	:	Serial No. 77/372,586
Opposer,	:	Filed: January 15, 2008
	:	Mark: GOODNESS GRACIOUS
v.	:	GOURMET & Design
	:	Int. Class 30
GOODNESS GRACIOUS	:	Published June 10, 2008
GOURMET CO.,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

The Weck Corporation d/b/a Gracious Home (hereinafter, "Opposer" and/or "Gracious Home"), a corporation organized and existing under the laws of the State of New York with a principal place of business at 1220 Third Avenue, New York, New York 10021, believes that it will be damaged by the registration of U.S. Trademark Application Serial No. 77/372,586 for the mark GOODNESS GRACIOUS GOURMET & Design in International Class 30 and hereby opposes same.

As grounds for opposition it is alleged that:

COUNT I

**LIKELIHOOD OF CONFUSION
UNDER 15 U.S.C. §§ 1114 and 1125(a)**

1. Gracious Home offers retail store services specializing in housewares, hardware and home furnishings, as well as a wide variety of goods under the marks GRACIOUS HOME® and the shortened version thereof, namely, GRACIOUS®.

2. Gracious Home is the owner of the following federal registrations in the U.S. Patent & Trademark Office for its GRACIOUS HOME® name and mark and the shortened version thereof, namely, GRACIOUS®:

MARK	REG. NO.	REG. DATE	DESCRIPTION OF GOODS AND SERVICES
GRACIOUS HOME	947,721	11/21/72	Retail gift, hardware, housewares and home furnishing store services, in Class 42
GRACIOUS HOME	2,284,659	10/12/99	Interior and/or exterior paint, in Class 2; Cleaning preparations, namely tile cleaners and tile polishes, in Class 3; candles, in Class 4; hand tools, namely, screwdrivers and screwdriver bit kits, in Class 8; flashlights, lamps, lampshades and faucets, in Class 11; wall clocks, in Class 14; gift wrapping paper and framed photographic, pictorial and lithographic prints, in Class 16; picture frames and decorative pillows, in Class 20; non-metal and non-precious metal housewares, namely, plates, cups, saucers, bowls, creamers, sugar bowls, teapots, coffee pots, serving platters, spoon rests, candlesticks; butter dishes, salt shakers, pepper shakers, egg cups, pitchers, soup tureens, canisters, mugs, flower pots, vanity trays, wastepaper baskets, tissue box covers, cachepots, drinking glasses, namely, tumblers, soap dishes, toothbrush holders, skin and hand lotion pumps for home use, cotton jars, cotton swab jars carafes, picnic baskets and sponges for household purposes, in Class 21; domestic textiles, namely, dinner napkins, cocktail napkins, placemats, tablecloths, shower curtains, bath towels, handtowels, bath sheets, washcloths, flat bed sheets, fitted bed sheets, pillowcases, pillow shams, duvet covers, dust ruffles, mattresses and bed spreads and comforters, decorative textile trim, in Class 24; apparel, namely baseball caps, in Class 25; decorative key tassels, decorative tie backs and ribbons, in Class 26
GRACIOUS	3,011,708	11/1/05	Candles, in Class 4

MARK	REG. NO.	REG. DATE	DESCRIPTION OF GOODS AND SERVICES
GRACIOUS	3,024,023	12/6/05	Hand tools, namely, screwdrivers, in Class 8
GRACIOUS	3,024,024	12/6/05	Cups; salt shakers, peppers shakers, mugs, and sponges for household purposes, in Class 21
GRACIOUS	3,024,025	12/6/05	Retail gift, hardware, housewares, home furnishing and furniture store services, in Class 35
GRACIOUS	3,029,630	12/13/05	Picture frames, in Class 20
GRACIOUS	3,036,142	12/27/05	Cleaning preparations, namely tile cleaners and tile polishes, in Class 3
GRACIOUS	3,036,143	12/27/05	Domestic textiles, namely, shower curtains, flat bed sheets, fitted bed sheets, pillowcases, pillow shams, duvet covers, in Class 24
GRACIOUS	3,085,757	4/25/06	Flashlights and lampshades, in Class 11
GRACIOUS HOME	3,264,838	7/17/07	Online retail store services in the field of retail gift, hardware, housewares and home furnishings, in Class 35
GRACIOUS HOME	3,351,200	12/11/07	Paper and cardboard gift boxes, in Class 16
GRACIOUS HOME	3,351,201	12/11/07	Tape measures, in Class 9
GRACIOUS HOME	3,351,202	12/11/07	Framed decorative mirrors, in Class 20
GRACIOUS HOME	3,351,209	12/11/07	Chemically-treated paper for the prevention of tarnishing, in Class 1
GRACIOUS HOME	3,351,799	12/11/07	Retail store services in the field of gifts, hardware, housewares and home furnishings, in Class 35
GRACIOUS HOME	3,408,659	4/8/08	Credit card services, in Class 36

The foregoing registrations are valid, subsisting, uncanceled and unrevoked. Gracious Home's U.S. Registration Nos. 947,721 and 2,284,659 are incontestable pursuant to 15 U.S.C. § 1065. Opposer intends to rely on the above registrations in this proceeding and, accordingly,

will order certified copies of the registrations showing both the current status of and current title to the registrations, pursuant to the provisions of 37 C.F.R. § 2.122(d)(2).

3. Gracious Home is one of the largest independently owned and operated retailers of housewares, hardware and home furnishings in New York. In connection with its retail store services, Gracious Home sells a wide variety of household goods and home furnishings, including but not limited to kitchenware, cookware, domestic textiles, appliances and tools, coffee pots and teapots, dinnerware, glassware, silverware, table linens, bowls and pitchers, publications such as cookbooks, home décor books and home decorating manuals, and assorted other housewares, home furnishings, and decorative accessories, all under its GRACIOUS HOME® marks.

4. In addition, Gracious Home sells a wide variety of housewares, household goods and home, kitchen and bath furnishings and fixtures under its marks GRACIOUS HOME® and GRACIOUS®.

5. Through its retail stores and internet website at <www.gracioushome.com>, Gracious Home offers for sale a wide range of cookware, bakeware, kitchen utensils, kitchen appliances and servingware under its GRACIOUS HOME® and GRACIOUS® marks, including but not limited to the following:

- a. Cake pans, bread loaf pans, muffin pans, pie dishes, molds and rings, cookie sheets and cookie pans, quiche pans, tart pans and bread bins;

- b. Mixing bowls, measuring cups and spoons, baking utensils, pastry boards, rolling pins, cookie cutters, baking racks, spatulas and knives and cutting boards;
- c. Spice mills, blenders, electric mixers, coffee makers, coffee grinders and coffee presses, tea kettles and tea infusers;
- d. Cookware sets, fondue pots, roasting and frying pans, sauce pans and grills; and
- e. Servingware, teapots, teacups, coffeepots and coffee mugs.

6. Gracious Home adopted the mark GRACIOUS HOME® for use in connection with retail store services in the field of housewares, hardware and home furnishings at least as early as 1963 and has made extensive use of its famous mark GRACIOUS HOME® and the shortened version thereof, namely, GRACIOUS®, since that time.

7. Since the 1960's, the mark GRACIOUS HOME® has been extensively advertised in the United States by Opposer in connection with the promotion and marketing of its retail store services and related goods.

8. Gracious Home receives substantial favorable publicity in widely circulated newspapers and magazines such as Crain's New York, Real Simple, In Style, New York Magazine, The New York Times, American Homestyle & Gardening, Time Out New York, Family Circle, Elle Décor and Bon Appetit.

9. In addition to its retail stores, Gracious Home operates an extensive website at <www.gracioushome.com> through which it advertises, promotes, and sells its products, including but not limited to household goods such as cookware, kitchenware and domestic textiles and furnishings, under the GRACIOUS HOME® and GRACIOUS® marks.

10. As a result of Opposer's long use and extensive advertising, promotion, and sales, Opposer's GRACIOUS HOME® and GRACIOUS® marks are well-known and recognized by the general public as the exclusive source of origin for high quality retail store services featuring housewares, hardware, and home furnishings.

11. On January 15, 2008, Applicant, Goodness Gracious Gourmet Co. ("Applicant") filed U.S. Trademark Application Serial No. 77/372,586 for the mark GOODNESS GRACIOUS GOURMET in International Class 30 for "grain-based food bars also containing chocolate, dry fruits, nuts, spices; bakery desserts; bakery goods; bakery products; bakery products, namely, sweet bakery goods; cookies; cookies and crackers; cakes; cup cakes; cracker and cheese combinations; crackers; pies; brownies; biscuits and bread; bread; bread and pastry; herb tea; herbal tea; donuts; muffins; beverages made of tea; coffee and tea; fruit teas; tea; tea-based beverages with fruit flavoring; fruit cobblers; fruit pies; biscuits; buns; candy bars; chocolate bars; granola-based snack bars; pastries; pastry" in the following design format:

*Goodness Gracious
Gourmet*
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12. In the subject application, Applicant disclaims the term "GOURMET."

13. Applicant's GOODNESS GRACIOUS GOURMET & Design mark is virtually identical to Opposer's GRACIOUS HOME® name and mark and is dominated by the term GRACIOUS.

14. The products which Applicant purports to offer under its GOODNESS GRACIOUS GOURMET & Design mark are closely related and complementary to products long offered by Opposer under the marks GRACIOUS HOME® and GRACIOUS®.

15. Applicant's Application Serial No. 77/372,586 contains a claimed date of first use of the subject mark of January 3, 2008, more than forty (40) years after Opposer's date of first use of GRACIOUS HOME®.

16. Applicant's use and registration of the mark GOODNESS GRACIOUS GOURMET & Design in connection with the recited goods is likely to cause confusion with the mark GRACIOUS HOME® and the shortened version thereof, namely, GRACIOUS®, as used by Opposer in connection with retail store services and kitchenware, cookware, bakeware, kitchen utensils, kitchen appliances and servingware.

17. Applicant's use and prospective registration of the mark GOODNESS GRACIOUS GOURMET & Design in connection with the food products identified in U.S. Application Serial No. 77/372,586 in Class 30 are likely to cause confusion with Opposer's

GRACIOUS HOME® and GRACIOUS® names and marks, as they falsely imply to the trade and the public that Applicant offers GRACIOUS HOME® or GRACIOUS® branded food products or that Applicant's food products are distributed through Gracious Home's retail stores and website, or that Applicant's GOODNESS GRACIOUS GOURMET food products are manufactured by Gracious Home.

18. Opposer believes and alleges that Applicant's mark, when applied to the goods in Class 30 set forth in Application Serial No. 77/372,586, is likely to cause confusion or mistake, or to deceive, and will deceive and mislead the trade and purchasing public into believing that Applicant is licensed or controlled by Opposer, or that Applicant is a division or a subsidiary of, or in some way related to Opposer, or that Applicant's goods are sponsored, licensed, approved or endorsed by Opposer.

19. Any problems or complaints concerning Applicant's goods offered under the mark GOODNESS GRACIOUS GOURMET & Design are likely to reflect adversely upon Opposer and are likely to seriously injure the reputation and goodwill of the famous GRACIOUS HOME® and GRACIOUS® names and marks as used by Opposer in connection with its retail store services and wide range of housewares, hardware, and home furnishings.

20. Opposer further believes and alleges that Applicant's mark, when applied to the goods identified in U.S. Trademark Application Serial No. 77/372,586, is likely to dilute the distinctive quality of Opposer's GRACIOUS HOME® and GRACIOUS® marks.

21. By reason of the foregoing facts, Opposer will be irreparably damaged by the registration of Applicant's confusingly similar and diluting GOODNESS GRACIOUS GOURMET & Design mark for the goods identified in U.S. Trademark Application Serial No. 77/372,586.

## **COUNT II**

### **DILUTION UNDER 15 U.S.C. § 1125(c)**

22. Opposer repeats and realleges the allegations set forth in paragraphs 1-21 hereof as if fully set forth herein.

23. Opposer's GRACIOUS HOME® and GRACIOUS® names and marks as used in connection with retail store services featuring housewares, hardware and home furnishings are famous among the general public and members of the trade.

24. Opposer's GRACIOUS HOME® and GRACIOUS® names and marks are inherently and commercially distinctive.

25. By virtue of the subject application, Applicant claims that it is using the mark GOODNESS GRACIOUS GOURMET & Design in commerce in connection with "grain-based food bars also containing chocolate, dry fruits, nuts, spices; bakery desserts; bakery goods; bakery products; bakery products, namely, sweet bakery goods; cookies; cookies and crackers; cakes; cup cakes; cracker and cheese combinations; crackers; pies; brownies; biscuits and bread; bread; bread and pastry; herb tea; herbal tea; donuts; muffins; beverages made of tea; coffee and



tea; fruit teas; tea; tea-based beverages with fruit flavoring; fruit cobblers; fruit pies; biscuits; buns; candy bars; chocolate bars; granola-based snack bars; pastries; pastry."

26. The claimed January 3, 2008 date of first use of the mark GOODNESS GRACIOUS GOURMET & Design in connection with the goods identified in Class 30 is decades after Gracious Home's GRACIOUS HOME® and GRACIOUS® names and marks became famous.

27. The January 15, 2008 date of filing of the subject application for GOODNESS GRACIOUS GOURMET & Design in connection with the goods identified in Class 30 is decades after Gracious Home's GRACIOUS HOME® and GRACIOUS® names and marks became famous.

28. Applicant's use of the mark GOODNESS GRACIOUS GOURMET & Design mark in commerce in connection with food products is likely to dilute the distinctive quality of Opposer's GRACIOUS HOME® and GRACIOUS® names and marks for retail store services and a wide variety of housewares, hardware and home furnishings.

29. Registration of Applicant's mark would be inconsistent with Opposer's prior rights in its GRACIOUS HOME® and GRACIOUS® names and marks established under common law, as well as inconsistent with Opposer's statutory grant of exclusivity of use of its GRACIOUS HOME® and GRACIOUS® names and marks, and would destroy Opposer's investment and goodwill in its GRACIOUS HOME® and GRACIOUS® names and marks.

30. By reason of the foregoing facts, Opposer will be irreparably damaged by registration of Applicant's identical, confusingly similar and diluting mark GOODNESS GRACIOUS GOURMET on the Principal Register of the United States Patent & Trademark Office for the goods recited in U.S. Application Serial No. 77/372,586.

### **COUNT III**

#### **FRAUD IN THE PROCUREMENT**

31. Opposer repeats and realleges the allegations set forth in paragraphs 1-30 hereof as if fully set forth herein.

32. On January 15, 2008, Applicant filed U.S. Trademark Application Serial No. 77/372,586 for the mark GOODNESS GRACIOUS GOURMET & Design for use in connection with "grain-based food bars also containing chocolate, dry fruits, nuts, spices; bakery desserts; bakery goods; bakery products; bakery products, namely, sweet bakery goods; cookies; cookies and crackers; cakes; cupcakes; cracker and cheese combinations; crackers; pies; brownies; biscuits and bread; bread; bread and pastry; herb tea; herbal tea; donuts; muffins; beverages made of tea; coffee and tea; fruit teas; tea; tea-based beverages with fruit flavoring; fruit cobbles; fruit pies; biscuits; buns; candy bars; chocolate bars; granola-based snack bars; pastries; pastry" in Class 30 (the "Application").

33. In the Application, Applicant declared under oath that Applicant "is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in

connection with the identified goods and/or services" pursuant to 15 U.S.C. § 1051(a) and that the GOODNESS GRACIOUS GOURMET & Design mark was first used by Applicant in connection with each of the recited goods in Class 30 "at least as early as 01/03/2008, and first used in commerce at least as early as 01/03/2008, and is now in use in such commerce."

34. In support of Applicant's claim of use, Applicant submitted to the U.S. Patent & Trademark Office a specimen consisting of a photograph showing what appears to be a plastic bag containing cookies with a crude label bearing the mark GOODNESS GRACIOUS GOURMET & Design.

35. Upon information and belief, as of the January 15, 2008 date of filing of the subject Application, Applicant did not use and is not currently using the GOODNESS GRACIOUS GOURMET & Design mark in connection with each and every good recited in the Application.

36. Applicant maintains a rudimentary homepage located at the domain name <goodnessgraciousgourmet.com>. Attached hereto as Exhibit 1 is a WHOIS printout dated October 7, 2008, reflecting that the <goodnessgracious.com> domain name is registered to Applicant. Applicant's homepage contains a picture of the same crude label bearing the GOODNESS GRACIOUS GOURMET & Design mark submitted in support of the Application and states only "Coming Soon." Attached hereto as Exhibit 2 is a print-out of the homepage located at <goodnessgraciousgourmet.com> dated October 7, 2008. Upon information and

belief, no products are sold by Applicant through the homepage located at the domain name <goodnessgraciousgourmet.com> under any mark.

37. Upon information and belief, Applicant does not maintain a telephone number, facsimile number or physical place of business. Upon further information and belief, Applicant falsely provided the telephone number and facsimile number of a third party in connection with its Application in order to mislead the U.S. Patent & Trademark Office.

38. Upon information and belief, as of the date of the filing of the Application, Applicant was not and is not currently in the business of offering each and every good recited in the Application under the mark GOODNESS GRACIOUS GOURMET & Design.

39. Upon information and belief, as of the date of the filing of the Application, Applicant did not offer for sale each and every good recited in the Application under the subject mark GOODNESS GRACIOUS GOURMET & Design. Upon further information and belief, Applicant currently does not offer for sale each and every good recited in the Application under the subject mark GOODNESS GRACIOUS GOURMET & Design.

40. Upon information and belief, Applicant's Application contained false and fraudulent statements regarding Applicant's claimed use of the mark GOODNESS GRACIOUS GOURMET & Design in connection with the recited goods.

41. Upon information and belief, the Application filed by Applicant contains multiple knowingly false statements that were intended to mislead the U.S. Patent & Trademark Office for purposes of procuring a trademark registration for the mark GOODNESS GRACIOUS GOURMET & Design.

42. Applicant's representations to the U.S. Patent & Trademark Office in its Application regarding the use of the subject mark are, upon information and belief, false.

43. Applicant's multiple false representations to the U.S. Patent & Trademark Office in its Application are material to the procurement of a registration for the mark GOODNESS GRACIOUS GOURMET & Design.

44. Upon information and belief, Applicant's multiple false representations to the U.S. Patent & Trademark Office in its Application were knowingly and willfully made with the intention of deceiving the U.S. Patent & Trademark Office.

45. Applicant's multiple false representations to the U.S. Patent & Trademark Office in its Application constitute fraud on the U.S. Patent & Trademark Office.

46. Opposer has been damaged by Applicant's fraud on the U.S. Patent & Trademark Office, as Applicant has sought to procure a registration for the mark GOODNESS GRACIOUS GOURMET & Design through unlawful means, for purposes of creating a likelihood of

confusion with and diluting Opposer's GRACIOUS HOME® and GRACIOUS® names and marks.

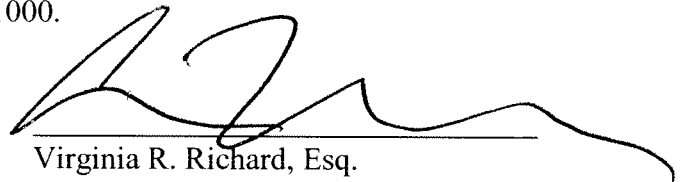
47. As a result of Applicant's fraudulent attempt to procure a registration of the mark GOODNESS GRACIOUS GOURMET & Design, Applicant is not entitled to any registration resulting from U.S. Trademark Application Serial No. 77/372,586 and the Application should be deemed void *ab initio*.

**WHEREFORE**, Opposer prays that this Opposition be sustained and Applicant's mark be denied registration in International Class 30.

The Commissioner is hereby authorized to charge the filing fee of \$300.00 pursuant to 37 C.F.R. § 2.6(a)(17) and any additional fees which may be required, or credit any overpayment, to Deposit Account No. 501-814, Order No. 85870.1000.

Dated: New York, New York  
October 8, 2008

By:



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**Attorneys for Opposer**  
**THE WECK CORPORATION**  
**d/b/a GRACIOUS HOME**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 8, 2008, a true and correct copy of the foregoing Notice of Opposition was duly served on Applicant, by first class mail, to the address below:

President  
Goodness Gracious Gourmet Company  
P.O. Box 16945  
Philadelphia, PA 19142-0945

A handwritten signature in black ink, appearing to read "Denise Bolden", is written over a horizontal line.

Denise Bolden

# EXHIBIT 1



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**Registrant:**

Goodness Gracious Gourmet Co.  
Gourmet Co., Goodness Gracious  
P.O. Box 16945  
Philadelphia, PA 19142  
US

Domain name: goodnessgraciousgourmet.com

**Administrative Contact:**

Goodness Gracious Gourmet Co. info@goodnessgraciousgourmet.com  
Gourmet Co., Goodness Gracious  
P.O. Box 16945  
Philadelphia, PA 19142  
US  
800-513-5907 Fax:



**Technical Contact:**

support@netfirms.com

Manager, Domains

5160 Yonge St., 1800

Toronto, ON M2N 6L9

CA

+1.4166612100 Fax: +14166610700

Registrar of Record: Netfirms Inc.

Record expires on 2009-02-05.

Record created on 2008-02-05.

Database last updated on 2008-10-03 18:51:33.

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WHOIS lookup**

**Backorder  
this name**

**NOTE:** Private Domain Registration is available for .com, .net, .org, .biz, .tv, .cc, .info and .mobi domain names only.

# **EXHIBIT 2**

# *Goodness Gracious Gourmet*

⚠ Coming Soon...